



REPUBLIC OF KENYA



KENYA LAW
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MLL v RKL (Matrimonial Cause 1 of 2018) [2022] KEHC 11400 (KLR) (29 March 2022) (Ruling)

Neutral citation: [2022] KEHC 11400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MATRIMONIAL CAUSE 1 OF 2018
SN MUTUKU, J
MARCH 29, 2022**

BETWEEN

MLL APPLICANT

AND

RKL RESPONDENT

RULING

1. By a Notice of Motion application dated 30th August, 2021 brought under sections 1, 1A, 3, 3A, 2, 86 of the *Civil Procedure Act* and Section 17 of the Matrimonial Property, MLL (the Applicant) is seeking orders that either party be at liberty to buy out the other based on the valuation report dated 3rd November, 2020 by [particulars withheld] and shares in terms of the decree to wit:
 - a. Ngong/Ngong/xxxx: The Respondent to get 80% and the Applicant to get 20% of the current value of the building erected on the land whereby the 20% which is to be given to the Applicant will be taken from other properties liable for distribution thereon.
 - b. Kajiado/Kaputei -North/ xxxx: The value of the buildings be shared equally among the parties.
 - c. Plot KLS/xx situated Laini Saba village at Kibera: The value of the building and developments which have been done on the land be distributed in equal shares.
 - d. West Pokot/Siyoi "A"/xxxx: The property be distributed between the parties in equal shares.
2. That in the alternative and without prejudice to the foregoing, in the event that neither party is able and/or willing to buy out the other, the property be forcefully sold and the proceeds be subdivided to wit:
 - a. Ngong/Ngong/xxxx: The Respondent to get 80% and the Applicant to get 20% of the proceeds of the building erected on the land whereby the 20% to be given to the Applicant will be taken from other properties liable for distribution thereon.



- b. Kajiado/Kaputei -North/ xxxx: The proceeds of the buildings be shared equally among the parties.
 - c. Plot KLS/xx situated Laini Saba village at Kibera: The proceeds of the building and developments which have been done on the land be distributed in equal shares.
 - d. West Pokot/Siyoi ‘A’/xxxx: The proceeds of the property be distributed between the parties in equal shares.
3. That costs of this application as well as for the site visit be provided for.
4. This application was supported by an Affidavit sworn by MLL on 30th August, 2021. In this affidavit, the Applicant has given the background of this matter leading to the orders he is seeking to execute.
5. The background of this case is that the parties herein were married on 26th October, 2009 at the ACK Church Ngong. That marriage broke down and the parties divorced in Divorce Cause No. xxx of 2016 at Milimani Commercial Courts. The Applicant brought this claim seeking subdivision of matrimonial property listed therein.
6. By a judgment delivered on 8th July 2019, the court granted the orders the Applicant is seeking to enforce. The effect of those orders is that the following properties be shared in the manner shown:
 - a. Ngong/Ngong/xxxx was declared as the matrimonial home. The land on which this home stands at current value was declared to belong to the Respondent. The value of the developments on that land is to be shared between the parties in the ratio of 80% to the Respondent and 20% to the Applicant. However, the Applicant was directed to recover his 20% from any other property because this was the matrimonial property where the Respondent lives with the children. The land where the matrimonial home stands was valued at Kshs 1,500,000 while the developments are valued at Kshs 4,000,000.
 - b. Ngong/Ngong/Kaputei-North/xxxx – the current land value belongs to the Respondent. This was valued at Kshs 4,100,000. The value of the developments has been placed at Kshs 2,600,000. The parties are to share the value of the developments equally.
 - c. Plot No. KLS/xx-Laini Saba Kibera is to be shared equally in respect of the value of developments. This has been valued at Kshs 2,600,000.
 - d. West Pokot/Siyoi ‘A’/xxxx – this property is to be shared equally between the two parties. The property was valued at Kshs 1,000,000.
7. In is averments, the Applicant states that his advocates attempted to reach out to the Respondent for purposes of appointing a valuer to undertake valuation of the properties herein without success. He therefore engaged Rank Global Management Limited to undertake the valuation of all the properties as the decree directed. He states that the Respondent has continued to frustrate the process with regards to effecting the decree.
8. He states further that the honourable court did not lay ground for the actualization of the said decree and it was on this basis that he filed the current application. He claims that he continues to suffer irreparable loss as the said matrimonial properties continue to fetch income in form of house rent which he does not benefit from. He urges this court to grant the prayers he is seeking in the interest of justice, equity and conscience, stating that the application and the prayers sought will not prejudice any party as the purpose sought is to give effect to the decree of this Honourable court.
9. The Respondent did not file any response.



10. On 17th November, 2021 the Applicant filed his submissions dated 10th November, 2021 in which he has raised two issues for determination:
 - i. Whether the court should order sale of matrimonial property as per the decree of this court dated 25th May, 2019.
 - ii. Whether costs should be provided for.
11. In arguing the first issue the Applicant through his counsel submitted that this matter was heard by the court and judgment was delivered on 25th May, 2019; that as a result of that judgment, the Applicant extracted and served upon the Respondent a demand for compliance; that the respondent however was uncooperative; that he conducted a valuation and filed a report dated 3rd November, 2020 and annexed to his application and marked "MLL -1".
12. The applicant argues that since judgment was delivered the he continues to suffer as the Respondent continues to fetch income from house rent at his expense. He relied on the case of Nakuru Matrimonial Cause No. 24 of 2016 *LWN -vs- PMG* where the court, in citing with approval the Supreme Court decision in *Martin Nyaga Wambora & 4 others v. Speaker of the Senate & 6 others* [2014] eKLR, held that Court orders ought to be obeyed as they are coercive commandments issued under the authority of the people as the sovereign.
13. He submitted that the judgment of 25th May, 2019 is long overdue and prayed that the court does order its enforcement as prayed in the application and particularly on timelines for compliance in addition the court does order the court's Deputy Registrar to sign transfer forms where the decreed properties are sold should the Respondent refuse to sign the transfer forms.
14. The Applicant cited Article 45(3) of *the Constitution* to emphasize on the equal rights of the parties to a marriage, at the time of, during and at dissolution of the marriage as well as Section 17 of the *Matrimonial Property Act*.
15. On the second issue it was submitted that he has satisfied the requirements for award of orders sought and thus should be awarded costs as prayed.

Analysis and Determination

16. The Respondent has not participated in this application. This court satisfied itself that the Respondent had been properly served after reading the Affidavit of Service dated 19th October 2021 and filed in court on 15th November, 2021.
17. I have read the judgment of this court (Nyakundi, J) dated 25th May 2019 and delivered by Hon. Mr. Justice Chacha Mwita on 8th July 2019. I have satisfied myself that indeed that judgment made orders as summarised below:
 - a. Ngong/Ngong/ xxxx is the matrimonial home. The value of the property is to be ascertained by way of valuation and the property be distributed so that the Respondent gets 100% of the current value of the land; that the current value of the building erected on the land be ascertained and the Respondent to get 80% and the Applicant to get 20%. The 20% to be given to the Applicant will be taken from other properties liable for distribution hereon.
 - b. Ngong/Ngong/xxxx is not matrimonial property. It belongs solely to the Respondent.



- c. Kajiado/Kaputei – North/xxxx to be valued and current value of the land to be given to the Respondent while the value of the buildings and developments is to be shared equally between the parties.
 - d. Plot KLS/xx situated Laini Saba Village at Kibera to be valued. The value of the land to go to the Respondent while the value of the building and developments thereon to be distributed between the parties in equal shares.
 - e. West Pokot/Siyoi “A” /xxxx to be valued the property and be distributed between the parties in equal shares.
 - f. Plot Number xxx Mnakei belongs to the Applicant.
 - g. West Pokot/Kisaunet/xxx belongs to the Respondent.
18. I have gone through the judgment dated 25th May, 2019 and the orders of the court were very clear on the distribution of the property and the same is listed herein. The court ordered that the properties needed to be valued to ascertain their current value. As argued by the Applicant, the Respondent has been non-compliant and has continued to show lack of co-operation. It is therefore upon this court to ensure that the orders granted are complied with so as to ensure actualization of the orders granted on 25th May, 2019.
19. It was also the Applicant’s case that this honourable court gives timelines for compliance so as to ensure enforcement of the same. In this regard the court has the discretion to issue timelines as it sees fit.
20. I need not over-emphasize the need to comply with court orders. Court orders are not issued in vain as it was stated in the case of *Wambua Maithya v Wambua Maithya: Pharmaceutical Society of Kenya & 2 others (Interested Parties)* [2020] where the court stated as follows:
- “In my considered view, Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal.”
21. Further, in *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828, the court stated that:
- “It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”
22. While it is clear to me that the court directed that the 20% share from the developments on Ngong/Ngong/xxxx for the Applicant be recovered from another property subject to sharing between the parties, I note that the Applicant has not addressed this issue. He has not proposed from which property he is claiming his 20% share which was to come from the matrimonial home on Ngong/Ngong/xxxxx.



23. It is my view that if this issue is not fully addressed in this Ruling, the parties will come back seeking dissolution of the issue.
24. Paragraph 6 of this Ruling lists the value of the four properties as shown in the Valuation Report annexed to the application under consideration. The value of the developments on the matrimonial property Ngong/Ngong xxxx is given as Kshs 4,000,000. My quick calculations gives me Kshs 800,000 as the 20% share out of Kshs 4,000,000. This value ought to come from any other property to be shared between the two parties.
- e. I have considered this matter, my considered view is that this figure be recovered from either Plot No. KLS/xx-Laini Saba whose developments are valued at Kshs 2,600,000, or Ngong/Ngong/Kaputiei-North/xxxx whose value of the developments has been placed at Kshs 2,600,000.
25. The Applicant also made a prayer that the Court's Registrar do sign transfer forms where the decreed properties are sold should the Respondent refuse to sign the transfer forms. This is not a strange prayer. In *Tabitha Wangithi Muriuki v Wathiba Kimoo Succession Cause No. 372 OF 2012* [2020] eKLR where the court stated that:
- “By ordering the Deputy Registrar to sign, the court will only be ensuring that the judgment is complied with and will not be descending into the arena of conflict. The orders are necessary for the ends of justice and to ensure that a party reaps the fruits of judgment and prevent abuse of the court process. I therefore find that the application has merits.”
26. After due consideration of this application, I am satisfied that the Applicant has made out a case for the orders he is seeking to be granted. Consequently, the Notice of Motion dated 30th August 2021 is hereby allowed. I grant the following orders:
- a. That either the Applicant and the Respondent is at liberty to buy out the other based on the valuation report dated 3rd November, 2020 by [particulars withheld] and shares as reflected in the judgment of this court.
- b. That to fully give effect to the judgment of the court delivered on 8th July 2019 and the decree drawn therefrom, I order that the 20% share of the value of the developments on Ngong/Ngong/xxxx, which translates into Kshs 800,000 calculated from the value of the developments on that property as per the annexed Valuation Report be recovered from either Plot No. KLS/xx-Laini Saba whose developments are valued at Kshs 2,600,000, or Ngong/Ngong/Kaputiei-North/xxxx whose value of the developments has been placed at Kshs 2,600,000.
- c. That in the alternative, in the event that neither party is able and/or willing to buy out the other, the property subject to subdivision, shall be forcefully sold and the proceeds be subdivided in the terms explained herein.
- d. That should the Respondent fail to comply with these orders, then the Deputy Registrar of this court is hereby authorised to sign the transfer forms to effect the transfer of the properties subject to the subdivision.
- e. That this being a matrimonial matter, I order that each party shall bear their own costs.
27. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF MARCH 2022.



S. N. MUTUKU
JUDGE

